

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

David & Julie Keck,
Petitioners-Appellants,

v.

Dubuque County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 11-31-0290
Parcel No. 0926277004

On March 12, 2012, the above-captioned appeal came on for hearing before the Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2) and Iowa Administrative Code rules 701-71.21(1) et al. The Appellants David and Julie Keck were self-represented and submitted evidence in support of their appeal. Dubuque County Attorney Lyle Galliard represents the Board of Review. The Appeal Board having reviewed the record, heard the testimony and being fully advised, finds:

Findings of Fact

David and Julie Keck are the owners of a residential, single-family property located at 16046 Paradise Lane, Dubuque, Iowa. The property is a one-story frame and brick home built in 2006, and has 2584¹ square feet of total living area (TLA). The property has a full, unfinished basement. Additionally, the dwelling has a 580² square-foot, attached garage with basement area; and a 101 square-foot open front porch. The site is 1.00 acre.

Kecks protested to the Dubuque County Board of Review regarding the 2011 assessment of \$364,370, allocated \$47,500 in land value and \$316,870 in improvement value. Their claim was based on the following grounds: 1) that the assessment was not equitable as compared with the assessments

¹ The 2011 property record card indicates 2584 square feet of TLA; however this included 80 square feet, which should be allocated to the attached garage. Correcting for this error, the TLA of the subject property is 2504.

² The 2011 property record card indicates 580 square feet of attached garage area. However this does not include 80 square feet, which is incorrectly allocated to the TLA. Correcting for this error, the garage is 660 square feet.

of other like property under Iowa Code section 441.37(1)(a); 2) that the property was assessed for more than the value authorized by law under section 441.37(1)(b), asserting the correct value was between \$330,000 to \$339,000; and 3) that there is an error in the assessment under section 441.37(1)(d). The Kecks' error statement essentially reiterates their assertion the property is over-assessed.

The Board of Review denied the protest.

Kecks then appealed to this Board, reasserting their claims. They assert the correct value is \$339,000, allocated as \$45,000 in land value, and \$294,000 in improvement value.

In their petition to the Board of Review, the Kecks referenced five nearby properties as equity comparables and two nearby properties as comparable sales. The following chart replicates some of the equity comparable information presented by Kecks.

| | 2011 AV | 2010 AV | % Difference | TLA | Basement Finish | Year Built | Features |
|--------------------------|------------------|------------------|-----------------|-------------|--------------------|---------------|--|
| Address | | | | | | | |
| Subject | \$364,370 | \$339,000 | 7.48% | 2584 | 0 | 2006 | 3 side brick/unfin bsmt/no deck/2 car |
| 16073 Frontier Ct | \$236,180 | \$228,600 | 3.32% | 1754 | 450 | 2000 | 1 side brick/fin bsmt/deck/2 car |
| 16107 Frontier Ct | \$347,350 | \$330,600 | 5.07% | 2632 | 0 | 2003 | 100% brick/2 Decks/3 car |
| 16014 Paradise Ln | \$329,640 | \$331,470 | -0.55% | 1776 | 950 | 1999 | 100% brick/fin bsmt/deck/3 car |
| 16098 Paradise Ln | \$298,860 | \$292,600 | 2.14% | 2214 | 0 | 2003 | 100% brick/deck/3 car |
| 16059 Paradise Ln | \$356,600 | \$352,160 | 1.26% | 2995 | 0 | 1999 | 3 side brick/deck/3 car |

Kecks believe the above properties, as well as the two sales on the following chart, demonstrate their property is inequitably assessed because it realized the largest increase in assessed value from 2010 to 2011. However, we note two of the properties are significantly smaller than Kecks' property with less than 1800 total square feet of TLA. Further, the Kecks did not provide a fair market value for the remaining properties, so an equity analysis cannot be completed. Nor did they assert their property

was valued using a different method than the method used to value the equity comparables. For these reasons, we give this information limited consideration.

Kecks also offered two sales in their neighborhood. Again, we note both are considerably smaller than the subject property and feature basement finish, which their property does not. No adjustments were made to the sales for differences. We, therefore, give the sales limited consideration.

| Address | 2011 AV | 2010 AV | % Difference | Sales Price | Sale Date | TLA | Bsmt Fin | Year Built |
|--------------------------|-----------|-----------|--------------|-------------|------------|------|----------|------------|
| Subject | \$364,370 | \$339,000 | 7.48% | | | 2584 | 0 | 2006 |
| 16073 Frontier Ct | \$236,180 | \$228,600 | 3.32% | \$200,000 | 1/4/2010 | 1754 | 450 | 2000 |
| 16231 Paradise Ln | \$304,630 | \$305,500 | -0.28% | \$305,000 | 11/23/2009 | 1872 | 1400 | 2000 |

Also at the Board of Review, Kecks pointed out what they believed to be an error in the calculations of the TLA of their home. They asserted the stairwell from the garage to the basement should not be included in the TLA, but rather in the garage area. The Board of Review did not acknowledge this error or correct for it. David Keck testified that he had conversations with County Assessor Dave Kubik regarding this error. Kubik testified at hearing that he agreed the stairwell should be included in the garage area rather than the TLA. However, because the Board of Review did not correct this error, Kubik acknowledged his "hands were tied" until the January 1, 2012 assessment. He told the Kecks, and this Board, it was his intent to correct this error for the 2012 assessment.

Kecks submitted partial plans and specifications (costs) for a four-season porch and deck area, which was added to the subject property after the January 1, 2011 assessment. We do not consider this information relevant to the current appeal and give it no consideration.

Kecks also submitted an appraisal completed by Jeff Adams of Adams Appraisal Services, Dubuque, Iowa. Adams developed the sales comparison approach and cost approach to value. He concluded a value of \$352,000 by the sales comparison approach and a value of \$346,217 by the cost approach. His final opinion of value is \$352,000, as of October 14, 2011. We note this is ten months after the assessment date of January 1, 2011, which is the focus of this appeal. Adams also included

and valued the four-season porch and deck addition to the subject property, which were added after the January 2011 assessment date. Additionally, all of the sales considered by Adams occurred after the January 2011 assessment date. Regarding the sales Adams chose, we note some minor errors in adjustments, such as missed adjustments for partial brick exteriors compared to the subject having three sides of brick. Additionally, the property record card for Adams' Comparable 4 indicates this property has a pool that was not reported or valued.

Disregarding the minor errors, our primary concerns with the appraisal are its effective date of the valuation, which is ten months after the assessment date in question, and the inclusion of a four-season room and deck area that did not exist as of January 1, 2011. During testimony, David Keck stated that Adams indicated it was better to value the property with a current effective date because of the addition, rather than value it as of January 1, 2011. This indicates to us that Adams is unfamiliar with ad valorem valuation. Because of the October 2011 effective date and the inclusion of improvements that did not exist as of the assessment date, we give the Adams appraisal limited consideration to establish the actual value of the property as of January 1, 2011. We note, however, it does tend to show the property is over assessed especially considering the value would likely be lower without the new improvements.

The Dubuque County Board of Review submitted an appraisal completed by Bradley Brissey of Brissey Realty, address unknown. Brissey developed only the sales comparison approach to value. He concluded a value opinion of \$370,000, as of January 1, 2011. He included six sales. Five sold in 2010 and one sold in 2009. His adjusted values range from \$335,220 to \$421,700.

Kecks were critical of Brissey's appraisal stating some of the sales, specifically Comparable 3 at 2164 Palmer Drive and Comparable 5 at 6466 Torrey Pines Drive, were located in a more prestigious Westwood Estates subdivision built up around a golf course. Kecks assert those properties would have more market appeal, which can be observed by their higher sales prices compared to the other properties not located in the golf subdivision. We note these properties sold for \$410,000 and

\$419,500 respectively; compared to the unadjusted sales prices of Brissey's four other comparables ranging from \$305,000 to \$385,000. This unadjusted evidence would seem to imply a difference between the neighborhoods, considering everything else is equal. Likewise, the adjusted values of Comparables 3 and 5 are higher than the four other sales considered by Brissey. Based on the information contained in the appraisal, we agree with Kecks' assertion that these properties are not comparable. Eliminating these two properties as not comparable, the adjusted range of value for the four remaining Brissey comparables is \$335,240 to \$395,390, with a median adjusted sales price of \$342,160. Additionally, we note three of the four remaining Brissey comparables have adjusted values of less than \$350,000.

We find the Brissey appraisal, excluding the two sales located in a development with a golf course as incomparable, to be the best evidence of fair market value in the record. Brissey's conclusion of value apparently relied heavily on the two sales that we have found incomparable to the subject property due to their superior location. Considering only the four remaining comparables, with three of those sales having adjusted values of less than \$350,000, we find the median sales price to be the most reflective of the subject property's market value as of January 1, 2011.

Based on the foregoing, we find a preponderance of the evidence demonstrates the subject property is over-assessed and its correct assessment.

Conclusions of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2011). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only

those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

To prove inequity, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shriver*, 257 Iowa 575, 133 N.W.2d 709 (1965). The six criteria include evidence showing

"(1) that there are several other properties within a reasonable area similar and comparable . . . (2) the amount of the assessments on those properties, (3) the actual value of the comparable properties, (4) the actual value of the [subject] property, (5) the assessment complained of, and (6) that by a comparison [the] property is assessed at a higher proportion of its actual value than the ratio existing between the assessed and the actual valuations of the similar and comparable properties, thus creating a discrimination."

Id. at 579-580. The gist of this test is the ratio difference between assessment and market value, even though Iowa law now requires assessments to be 100% of market value. § 441.21(1). Kecks did not provide sufficient evidence to support the assertion their property was inequitably assessed.

In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the

correct value of the property. *Bockeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). While Kecks provided an appraisal, we do not consider it a reliable indicator of the market value on January 1, 2011, due to the effective date, the use of sales all occurring after the January 1, 2011 assessment, and the inclusion of additions that did not exist as of the assessment date. We find the best evidence in the record for the market value of the subject property is Brissey's appraisal provided by the Board of Review. However, Brissey's appraisal considered two sales we find are not comparable to the subject for being located in a superior development. "To determine whether other properties are sufficiently comparable to be used as a basis for ascertaining market value under the comparable-sales approach, [the Supreme Court] has adopted the rule that the conditions with respect to the other land must be 'similar' to the property being assessed." *Soifer v. Floyd County Bd. of Review*, 759 N.W.2d 775, 783 (Iowa 2009). "Similar does not mean identical, but having a resemblance; and property may be similar . . . though each possess various points of difference." *Id.* Determining comparability of properties is left to the "sound discretion" of the trier of fact. *Id.* Consideration should be given to size, use, location, and character, as well as the nature and timing of the sale. *Id.* This Board is "free to give no weight to proffered evidence of comparable sales which it finds not to be reflective of market value." *Heritage Cablevision v. Board of Review of City of Mason City*, 457 N.W.2d 594, 598 (Iowa 1990). After eliminating the two sales with superior location, the median adjusted price of the remaining four sales is \$342,160, which we find to be a reasonable indication of the market value as of the January 1, 2011, assessment.

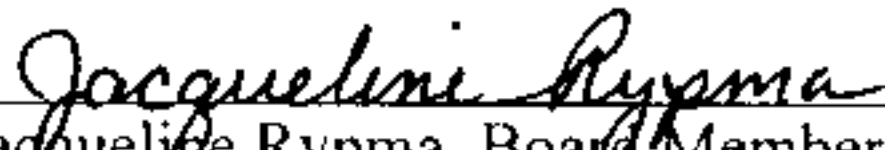
We find the evidence supports the claim that the property is over-assessed.

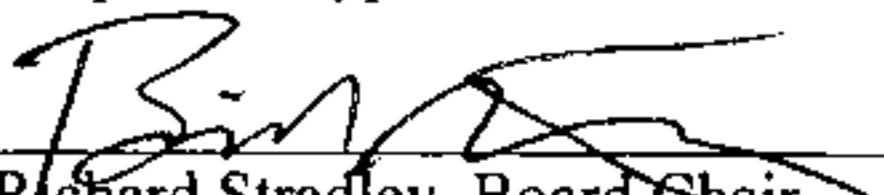
THE APPEAL BOARD ORDERS the assessment of David and Julie Keck's property located at 16046 Paradise Lane, Dubuque, Iowa, be modified to a total value of \$342,160, as of January 1, 2011.

The Secretary of the State of Iowa Property Assessment Appeal Board shall mail a copy of this Order to the Dubuque County Auditor and all tax records, assessment books and other records pertaining to the assessments referenced herein on the subject parcels shall be corrected accordingly.

Dated this 2 day of May, 2012.


Karen Oberman, Presiding Officer


Jacqueline Rypma, Board Member

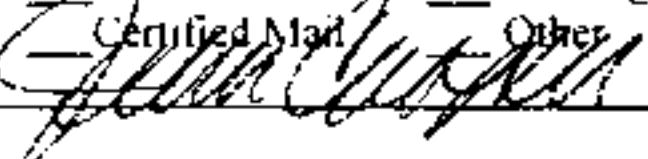

Richard Stradley, Board Chair

Cc:

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| Certificate of Service | |
| The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>5-2</u> , 2012 | |
| By: | <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX |
| | <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier |
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| Signature: |  |